

United States District Court
Central District of California

ILYSE KLAVIR,

Plaintiff,

v.

ENCOMPASS INSURANCE
COMPANY, and DOES 1 through 50,
inclusive,

Defendants.

Case No. 14-cv-02388-ODW(PLAx)

**ORDER REMANDING CASE TO
SUPERIOR COURT**

On March 27, 2014, Defendant Encompass Insurance Company removed this action to this Court, invoking diversity jurisdiction under 28 U.S.C. § 1332, 1441, and 1446. (ECF No. 1.) But after considering Encompass's Notice of Removal, the Court finds that it lacks subject-matter jurisdiction over this action. The Court therefore **REMANDS** this case to Los Angeles County Superior Court, case number LC101345.

Federal courts are courts of limited jurisdiction, having subject-matter jurisdiction only over matters authorized by the Constitution and Congress. U.S. Const. art. III, § 2, cl. 1; *e.g.*, *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). A defendant may only remove a suit filed in state court if the federal court would have had original jurisdiction over the suit. 28 U.S.C. § 1441(a). But courts strictly construe the removal statute against removal jurisdiction, and federal "jurisdiction must be rejected if there is any doubt as to the right of removal in the

1 first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The party
2 seeking removal bears the burden of establishing federal jurisdiction. *Durham v.*
3 *Lockheed Martin Corp.*, 445 F.3d 1247, 1252 (9th Cir. 2006) (citing *Gaus*, 980 F.2d at
4 566).

5 Federal courts have original jurisdiction where an action presents a federal
6 question under 28 U.S.C. § 1331 or diversity of citizenship under 28 U.S.C. § 1332.
7 To exercise diversity jurisdiction, a federal court must find complete diversity of
8 citizenship among the adverse parties, and the amount in controversy must exceed
9 \$75,000, usually exclusive of interest and costs. 28 U.S.C. § 1332(a). Alternatively,
10 diversity jurisdiction can be established under the Class Action Fairness Act
11 (“CAFA”). Under CAFA, diversity jurisdiction exists in “mass action” suits so long
12 as the following requirements are met: (1) 100 or more plaintiffs; (2) common
13 questions of law or fact between plaintiffs’ claims; (3) minimal diversity, where at
14 least one plaintiff is diverse from one defendant; (4) aggregated claims in excess of \$5
15 million; and (5) at least one plaintiff’s claim exceeding \$75,000. 28 U.S.C. § 1332(d);
16 *Abrego v. Dow Chem. Co.*, 443 F.3d 676, 689 (9th Cir. 2006).

17 For complete-diversity purposes, a natural person’s citizenship is “determined
18 by her state of domicile, not her state of residence.” *Kantor v. Warner-Lambert Co.*,
19 265 F.3d 853, 857 (9th Cir. 2001); *see also Jeffcott v. Donovan*, 135 F.2d 213, 214
20 (9th Cir. 1943) (“Diversity of citizenship as a basis for the jurisdiction of a cause in
21 the District Court of the United States is not dependent upon the residence of any of
22 the parties, but upon their citizenship.”).

23 In its Notice of Removal, Encompass asserts that Klavir is “a citizen and
24 resident of the State of California.” (Not. of Removal ¶ 5 (citing ¶ 1 of the
25 Complaint.) But Kalvir avers in her complaint that she is “a *resident* of the County of
26 Los Angeles, State of California.” (Compl. ¶ 1) (emphasis added). While a party’s
27 residence may be prima facie evidence of that party’s domicile when an action is
28 brought in federal court in the first instance, *see State Farm Mut. Auto. Ins. v. Dyer*,

1 19 F.3d 514, 520 (10th Cir. 1994), mere residence allegations are insufficient to
2 establish citizenship on removal in light of the strong presumption against removal
3 jurisdiction. *See Kanter*, 265 F.3d at 857; *Gaus*, 980 F.2d at 567.

4 And Encompass does not cite any objective facts to establish that Klavir is a
5 California citizen, such as “voting registration and voting practices, . . . location of
6 brokerage and bank accounts, location of spouse and family, membership in unions
7 and other organizations, place of employment or business, driver’s license and
8 automobile registration, and payment of taxes.” *Lew v. Moss*, 797 F.2d 747, 750 (9th
9 Cir. 1986). The Court therefore finds that Encompass has not established that this
10 Court has diversity jurisdiction over this case. Accordingly, the Court *sua sponte*
11 **REMANDS** this case to Superior Court of California, Los Angeles County, 6230
12 Sylmar Avenue, Van Nuys, California 91401, case number LC101345. *See* Fed. R.
13 Civ. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter
14 jurisdiction, the court must dismiss the action.”). The Clerk of Court shall close this
15 case.

16 **IT IS SO ORDERED.**

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18 April 1, 2014

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21 **OTIS D. WRIGHT, II**
22 **UNITED STATES DISTRICT JUDGE**
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